IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 121 of 2005

Lal Singh
S/o Parveen Singh
R/o Nai Basti, Jhula Pul,
Kotdwar, P.S. Kotdwar
District Pauri Garhwal.

…….. Appellant

Versus

State of Uttaranchal

….. Respondent

Mr. K.S. Verma, Advocate for the appellant.
Mr. A. Rab, Addl. Government Advocate for the respondent State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

Prafulla C. Pant, J. (Oral)

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 02.03.2001, passed by learned Sessions Judge, Pauri Garhwal, in Sessions trial No. 16 of 2000, whereby accused / appellant Lal Singh has been convicted on the charge of offence punishable under Section 376 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and sentenced to imprisonment for life. The trial court also directed the accused / appellant to pay find of Rs. 20,000/-, in default of payment of

which, the convict shall undergo simple imprisonment for further period of four years.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 23rd February 2000, complainant Savitri Devi (P.W. 2) along with her daughter P.W. 1 Ms. Kanti (the victim) aged 13 years and Lal Singh (accused / appellant) has gone to forest to collect fire woods. When she (Savitri Devi) was collecting the fire woods near Sidhbli Temple, accused / appellant Lal Singh and Ms. Kanti (P.W. 1) were collecting the same at some distance from her. Getting an opportunity, accused / appellant committed rape on Ms. Kanti, who was his step daughter. A report (Ext. A 1) was lodged with the police on 3rd March 2000, i.e. after more than seven days of the incident. A crime No. 404 of 2000 was registered at the police station Kotdwar and check report (Ext. A –4) was prepared by the police. An entry in connection of the report was made in the general diary at serial No. 6, on that very day, at about 2:00 P.M. (copy of extract of which is Ext. A –5). Ms. Kanti was sent for medical examination with lady constable Kamla Chauhan to Government Hospital Kotdwar, where she was examined, at about 2:45 P.M., by Mr. Reeta kala (P.W. 3) and report (Ext. A –2) was got prepared. On medical examination, the Medical Officer found hymen of the

girl, torn and bleeding present. However, no external injury was seen at the time of examination. For determination of age, the Medical Officer advised X-ray examination, and after the report (Ext. A –3) of the Radiologist Dr. D.K. Jain (P.W. 4) is received, it was verified that the girl was aged 13 – 14 years. Meanwhile, the Investigating Officer interrogated the witnesses and prepare site plan (Ext. A –6). On completion of investigation, a charge sheet (Ext. A –7) was submitted by the Investigating Officer Sub Inspector T.S. Rana (P.W. 5) against the accused Lal Singh.

4) The Magistrate on receipt of the charge sheet, after giving necessary copies to the accused, as required under Section 207 of the Cr.P.C., appears to have committed the case to the court of Sessions, for trial. Learned Sessions Judge, Pauri Garhwal, after hearing the prosecution and the defence on 29.06.2000, framed charge of offence punishable under Section 376 of I.P.C., against the accused / appellant Lal Singh, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Ms. Kanti (the victim); P.W. 2 Savitri Devi (informant and mother of the victim); P.W.3 Dr. Reeta kala (who medically examined the girl); P.W. 4 Dr. D.K. Jain (Radiologist) and P.W. 5 Sub Inspector T.S. Rana (who investigated the crime). The oral and documentary evidence, was

put to the accused Lal Singh under Section 313 of Cr.P.C, in reply to which he alleged the same to be false. At the end of his examination under Section 313 of Cr.P.C., accused alleged that on 20.02.2000, he had a quarrel with his second wife Savitri Devi. He also stated that he had two sons from the first wife. He further told the court that his second wife wanted half share in the property, which he refused to part with, and as such, he has been falsely implicated in the crime by Savitri Devi and her daughter. No evidence in defence was adduced. The trial court, after hearing the parties, found accused/appellant Lal Singh guilty of charge of offence punishable under Section 376 of I.P.C., and after hearing the parties on sentence, sentenced him to imprisonment for life and also to pay fine of Rs. 20,000/-, in default of payment of which, the convict was directed to undergo simple imprisonment for further period of four years. Aggrieved by said judgment and order dated 02.03.2001, passed by the trial court, this appeal is preferred by the convict Lal Singh.

5) Before further discussions, it is pertinent to mention here, that admittedly, accused / appellant is stepfather of the victim (Ms. Kanti).

6) P.W. 1 Ms. Kanti has stated on oath that on 23.02.2000, she had gone with her mother Savitri Devi and Lal Singh (accused) to collect fire woods from the

forest. When she was collecting fire woods near Sidhbali Temple, her mother was collecting the same at some distance, There were trees all around. Accused Lal Singh getting an opportunity had a sexual intercourse with her against her will. The witness further narrated that she told about the incident to her mother. P.W. 1 Ms. Kanti states that the incident took place at about 4:00 P.M. This witness at the end of her examination-in-chief states that the report was lodged only after 8-9 days, and thereafter, she was medically examined.

7) Above statement of P.W. 1 Ms. Kanti gets corroboration from the statement of her mother P.W. 2 Savitri Devi. This witness has also stated on oath that on 23.02.2000, near Sidhbali Temple, she along with accused Lal Singh and Ms. Kanti, was collecting fire woods at some distance from the two. This witness states that she heard shrieks of her daughter and rushed towards the site. P.W. 2 Savitri Devi further narrates that she herself saw Lal Singh committing rape on Ms. Kanti. It is also stated by this witness that she lodged first information report (Ext. A –1), after nine days of the incident. As to the explanation in delay in lodging the first information report, the witness states that accused Lal Singh had threatened her of dire consequences. The explanation of delay in lodging first information report is accepted as the same appears to be natural.

8) Medical evidence on record also corroborates the prosecution story narrated by the aforesaid two witnesses. P.W. 3 Dr. Reeta Kala, who medically examined the girl on 03.03.2000 and prepared report (Ext. A –2) has stated that on medical examination she found hymen of the girl torn and bleeding present. As to the age of the girl, statement of P.W. 4 Dr. D.K. Jain, Radiologist, who prepared report Ext. A –3, after X-ray examination corroborates the fact that the girl was aged 13 –14 years. Sexual assault on the minor girl is established. She or her mother would not falsely implicate their own relative leaving the real culprit.

9) In view of above discussion of evidence, we are in complete agreement with the trial court that the prosecution has been successful in proving the charge of offence punishable under Section 376 of I.P.C. against the accused / appellant Lal Singh.

10) Mr. K.S. Verma, learned counsel for the appellant submitted that the appellant is an old person of 70 years and had been already in jail for more than seven years. From the papers on record, it appears that he is in jail during the trial and also during the period of this appeal. Accused / appellant Lal Singh as is clear from the arrest memo, appears to have been arrested on 04.03.2000. The age mentioned in the statement recorded by the trial court under Section 313 of Cr.P.C., also shows that at the time of trial his age was 63 years.

Considering the age of the appellant, we are of the view that sentence of rigorous imprisonment for seven years would meet the ends of justice. Therefore, we accept the submission of learned counsel for the appellant for reduction of sentence.

11) Accordingly, the appeal deserves to be partly allowed. The impugned judgment and order dated 02.03.2001, passed in Sessions Trial No. 16 of 2000, by learned Sessions Judge, Pauri Garhwal, is affirmed on the point of conviction. However, on the quantum of sentence, the appeal is partly allowed and the sentence of imprisonment for life and to pay fine of Rs. 20,000/-, passed against the appellant, is set aside. In its stead, the accused / appellant Lal Singh is sentenced to rigorous imprisonment for a period of seven years under Section 376 of I.P.C. The period already undergone by him during the trial and period of appeal shall be adjusted / set off against the sentence awarded by this Court. The appeal stands disposed of, accordingly.

(Dharam Veer, J.) (Prafulla C. Pant, J.)

Dt. March 16, 2007.
H.Negi